



2834

2834

PATENT  
2565-0225P

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant: Shusou WADAKA et al. Conf.: 9099  
Appl. No.: 09/778,872 Group: 2834  
Filed: February 8, 2001 Examiner: Mark O. BUDD  
For: FILM ACOUSTIC WAVE DEVICE AND ITS MANUFACTURING  
METHOD AND CIRCUIT DEVICE

**PETITION UNDER 37 C.F.R. 1.144 FOR RECONSIDERATION OF  
RESTRICTION REQUIREMENT**

Assistant Commissioner for Patents  
Washington, DC 20231

Sir:

Applicants hereby petition for reconsideration of the restriction requirement, made final in the Office Action of October 9, 2002. In the October 9, 2002 Office Action, the Examiner had withdrawn the method claims 60 and 17-23 from further consideration instead of addressing the Applicants' traversal and/or examining those claims. Applicants hereby request examination of those method claims as well as the elected claims 24-40, 61, and 62.

The method claims had been separately grouped from the present product-by-process claims 24-40, 61, and 62, in a Restriction Requirement of May 2, 2002. That requirement was subsequently traversed in the Amendment filed August 23, 2002. The Final Office Action of October 9, 2002 withdrew claims 60 and 17-23 as being drawn to a method of manufacture (claims 61

and 62 were also withdrawn from consideration; however, since they depend from claim 24, for purposes of this petition it is assumed that those claims were inadvertently withdrawn). No further explanation was made.

The Examiner has not addressed the Applicants' traversal of the restriction requirement. In particular, the Examiner has not asserted that the product as claimed can be made by another materially different process. According to the MPEP 806.05(f), if applicant convincingly traverses the requirement, the burden shifts to the examiner to document a viable alternative process, or withdraw the requirement.

The present invention is directed to a process of forming a plurality of acoustic wave devices as a wafer, and the resulting wafer containing the plurality of acoustic wave devices. In the formation process, specific characteristics of the chips are varied across the wafer. On the other hand, the references relied on in the Office Action disclose only individual chips. In other words, none of the references disclose a plurality of chips formed as a wafer; an issue discussed in the Appeal to the Board (see the Appeal Brief filed concurrently in the present application). Applicants submit that an individual chip may be produced using different processes. However, the present acoustic wave devices are formed as a wafer by the claimed wafer-based process. Because the claimed product is a wafer, the product as claimed can only be made by the wafer-based process. Thus, Applicants submit that the restriction is improper and respectfully request examination of the method claims 60 and 17-23, along with the elected product-by-process claims 24-40, 61, and 62.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully Submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By: 

Michael K. Mutter

Reg. No. 29,680

P.O. Box 747

Falls Church, VA 22040-0747

(703) 205-8000

*RWS*  
MKM/CJB/sjl:cb  
2265-0225P